

1 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 5:075. Cabinet review procedures for KPDES permits.

6 RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-120, 224.99-010,
7 [224.10-100, 224.10-420, 224.10-440, 224.10-470, 224.16-050,] 224.70-100, 33 U.S.C. 1251 et
8 seq. [224.70-110]

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 33 U.S.C.
10 1251 et seq., 1342

11 NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100 authorizes the
12 Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke,
13 modify, suspend or deny under such conditions as the cabinet may prescribe, permits to
14 discharge into any waters of the Commonwealth. KRS 224.16-050(1) establishes that the
15 cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water
16 Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33
17 U.S.C. Section 1342(b) and (d). This administrative regulation sets forth the procedures through
18 which the cabinet will follow in receiving permit applications, preparing draft permits, issuing
19 public notice, inviting public comment and holding public hearings on draft permits.

20 Section 1. Review of the Application. (1) Any person who requires a permit under
21 the KPDES program shall complete, sign, and submit to the cabinet an application for the permit

1 as required under 401 KAR 5:060, Section 1. Applications are not required for KPDES general
2 permits. However, operators who elect to be covered by a general permit shall submit written
3 notification to the cabinet at such time as the cabinet indicates in Section 3 of this administrative
4 regulation.

5 (2) The cabinet shall not begin the processing of a permit until the applicant has fully
6 complied with the application requirements for the permit, as required by 401 KAR 5:060,
7 Section 1.

8 (3) Permit applications shall comply with the signature and certification requirements
9 of 401 KAR 5:060, Section 9.

10 (4) The cabinet shall review for completeness every application for a KPDES permit.
11 Each application submitted by a KPDES new source or KPDES new discharger shall be
12 reviewed for completeness by the cabinet within thirty (30) days of its receipt. Each application
13 for a KPDES permit submitted by an existing source shall be reviewed for completeness within
14 sixty (60) days of receipt. Upon completing the review, the cabinet shall notify the applicant in
15 writing whether the application is complete. If the application is incomplete, the cabinet shall
16 list the information necessary to make the application complete. If the application is for an
17 existing source, the cabinet shall specify in the notice of deficiency a date for submitting the
18 necessary information. The cabinet shall notify the applicant that the application is complete
19 upon receiving this information. After the application is completed, the cabinet may request
20 additional information from an applicant when necessary to clarify, modify, or supplement
21 previously submitted material. Requests for the additional information shall not render an
22 application incomplete.

23 (5) If an applicant fails or refuses to correct deficiencies in the application, the permit

1 may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and
2 administrative regulations promulgated pursuant thereto.

3 (6) If the cabinet decides that a site visit is necessary for any reason in conjunction
4 with the processing of an application, the cabinet shall notify the applicant and a date will be
5 scheduled.

6 (7) The effective date of an application is the date on which the cabinet notifies the
7 applicant that the application is complete as provided in subsection (4) of this section.

8 (8) For each application from a major facility new source, or major facility new
9 discharger, the cabinet shall no later than the effective date of the application, prepare and mail
10 to the applicant a project decision schedule. The schedule will specify target dates by which the
11 cabinet intends to:

12 (a) Prepare a draft permit;

13 (b) Give public notice;

14 (c) Complete the public comment period, including any public hearing;

15 (d) Issue a final permit; and

16 (e) Complete any formal proceedings under this administrative regulation.

17 (9) Conflicts of interest.

18 (a) Any person who issues a permit will be subject to the conflict of interest
19 provisions of KRS 11A.020 and 11A.030. The director of the Division of Water shall not
20 receive or have received during the previous two (2) years, a significant portion of income
21 directly or indirectly from permit holders or applicants for a permit.

22 (b) Any person aggrieved by the issuance of a permit under the KPDES administra-
23 tive regulations may challenge the permit pursuant to Section 13 of this administrative regulation

1 if paragraph (a) of this subsection has been violated.

2 (c) The hearing officer shall remand any permit issued in violation of paragraph (a)
3 of this subsection to the cabinet for reconsideration.

4 (d) Following remand, any cabinet employee who reconsiders the permit shall be
5 subject to the conflict of interest provisions set forth in paragraph (a) of this subsection. The
6 reconsideration shall require a new public comment period and public hearing only if
7 information offered during earlier permit proceedings was excluded by the cabinet as a direct
8 result of a conflict of interest.

9 Section 2. Review Procedures for Permit Modification, Revocation and Reissuance,
10 or Revocation. (1) Permits may be modified, revoked and reissued, or revoked either at the
11 request of any interested person, including the permittee, or upon the cabinet's initiative.
12 However, permits may only be modified, revoked and reissued, or revoked for the reasons
13 specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain
14 facts or reasons supporting the request.

15 (2) If the cabinet decides the request is not justified, the cabinet shall send the
16 requester a brief written response giving a reason for the decision. Denials of requests for
17 modification, revocation and reissuance, or revocation are not subject to public notice, comment,
18 or hearings.

19 (3) If the cabinet tentatively decides to modify or revoke and reissue a permit under
20 401 KAR 5:070, Section 6, the cabinet shall prepare a draft permit under Section 3 of this
21 administrative regulation incorporating the proposed changes. The cabinet may request
22 additional information and, in the case of a modified permit, may require the submission of an
23 updated permit application. In the case of revoked and reissued permits, the cabinet shall require

1 the submission of a new application.

2 (a) In a permit modification under this section, only those conditions to be modified
3 shall be reopened when a new draft permit is prepared. All other aspects of the existing permit
4 shall remain in effect for the duration of the unmodified permit. When a permit is revoked and
5 reissued under this section, the entire permit is reopened as if the permit had expired and was
6 being reissued. During any revocation and reissuance proceeding, the permittee shall comply
7 with all conditions of the existing permit until a new final permit is reissued.

8 (b) "Minor modifications" as described in 401 KAR 5:070, Section 6(3) shall not be
9 subject to the requirements of this section.

10 (4) If the cabinet preliminarily decides to revoke a permit under 401 KAR 5:070,
11 Section 7, the cabinet shall issue a notice of intent to revoke. A notice of intent to revoke is a
12 type of draft permit which follows the same procedure as any draft permit prepared under
13 Section 3 of this administrative regulation.

14 Section 3. Draft Permits. (1) Once an application is complete, the cabinet shall
15 preliminarily decide whether to prepare a draft permit or to deny the application.

16 (2) If the cabinet makes a preliminary decision to deny the permit application, the
17 cabinet shall issue a notice of intent to deny. A notice of intent to deny the permit application is
18 a type of draft permit which follows the same procedure as any draft permit prepared under this
19 section. If the cabinet's determination under Section 11 of this administrative regulation is that
20 the preliminary decision to deny the permit application was incorrect, the cabinet shall withdraw
21 the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this
22 section.

23 (3) If the cabinet makes a preliminary decision to issue a KPDES general permit, the

1 cabinet shall prepare a draft general permit in accordance with subsection (4) of this section.

2 (4) If the cabinet decides to prepare a draft permit, the cabinet shall prepare a draft
3 permit that contains the following information:

4 (a) All conditions under 401 KAR 5:065, Section 1;

5 (b) All compliance schedules under 401 KAR 5:070, Section 2;

6 (c) All monitoring requirements under 401 KAR 5:070, Section 3; and

7 (d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR
8 5:057, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080
9 and all variances that are to be included.

10 (5) All draft permits prepared by the cabinet under this section shall be accompanied
11 by a fact sheet and shall be based on the administrative record, publicly noticed, and made
12 available for public comment. The cabinet shall give notice of opportunity for a public hearing,
13 issue a final decision, and respond to comments. A demand for a hearing may be made pursuant
14 to KRS 224.10-420 and Section 13 of this administrative regulation following the issuance of a
15 final decision.

16 Section 4. Fact Sheets. (1) A fact sheet shall be prepared for every draft permit for a
17 major KPDES facility or activity, for every KPDES general permit, for every KPDES draft
18 permit that incorporates a variance or requires an explanation under subsection (3) of this
19 section, and for every draft permit which the cabinet finds is the subject of widespread public
20 interest or raises major issues. The fact sheet will briefly set forth the principal facts and the
21 significant factual, legal, methodological, and policy questions considered in preparing the draft
22 permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other
23 persons.

- (2) The fact sheet shall include, when applicable:
- (a) A brief description of the type of facility or activity which is the subject of the draft permit;
- (b) A quantitative and qualitative description of the discharges described in the application;
- (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (e) A description of the procedures for reaching a final decision on the draft permit including:
1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments will be received;
 2. Procedures for requesting a hearing and the nature of that hearing;
 3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative regulation by which the public may participate in the final decision;
- (f) Name and telephone number of a person to contact for additional information; and
- (g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.
- (3)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why the conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);
2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8); [ø]
3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a);
4. Limitations set on a case-by-case basis under 401 KAR 5:080, Section 1(2)(c)2;

or

5. Limitations to meet the criteria for permit issuance under 401 KAR 5:055, Section 2(7).

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or its subdivisions, an explanation of the cabinet's decision on regulation of users under 401 KAR 5:065, Section 2(12).

(4) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

(5) Justification for waiver of any application requirements under 401 KAR 5:060, Section 5.

Section 5. Public Notice of Permit Actions and Public Comment Period. (1) Scope.

(a) The cabinet shall give public notice that the following actions have occurred:

1. A permit application has been preliminarily denied under Section 3(2) of this administrative regulation;
2. A draft permit has been prepared under Section 3(4) of this administrative regulation;
3. A hearing has been scheduled under Section 7 of this administrative regulation; or
4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:002 [~~5:001~~].

1 (b) No public notice is required when a request for permit modification, revocation
2 and reissuance, or revocation is denied under Section 2 of this administrative regulation. Written
3 notice of that denial shall be given to the requester and to the permittee.

4 (c) Public notices may describe more than one (1) permit or permit action.

5 (2) Timing.

6 (a) Public notice of the preparation of a draft permit, including a notice of intent to
7 deny a permit application, required under subsection (1) of this section shall allow at least thirty
8 (30) days for public comment.

9 (b) Public notice of a public hearing shall be given at least thirty (30) days before the
10 hearing. Public notice of the hearing may be given at the same time as public notice of the draft
11 permit and the two (2) notices may be combined.

12 (3) Methods. Public notice of activities described in subsection (1)(a) of this section
13 shall be given by the following methods:

14 (a) The cabinet shall mail a notice to the persons listed in subparagraphs 1 through 5
15 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may
16 waive their rights to receive notice for any classes and categories of permits.

17 1. The applicant, except for KPDES general permittees, and Region IV, EPA.

18 2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife
19 resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other
20 appropriate government authorities, including any affected states;

21 3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the
22 National Marine Fisheries Service;

23 4. Any user identified in the permit application of a privately owned treatment

works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.

(b) For major permits and KPDES general permits, the cabinet shall publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this administrative regulation shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of KPDES draft general permits

under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits when there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this administrative regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement shall be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative regulation shall contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information

1 required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a
2 discharge when a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055,
3 Section 3, shall include:

4 1. A statement that the thermal component of the discharge is subject to effluent
5 limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative
6 statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33
7 U.S.C. Sections 1311 or 1316); and

8 2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that
9 alternative less stringent effluent limitations may be imposed on the thermal component of the
10 discharge and a brief description, including a quantitative statement, of the alternative effluent
11 limitations, if any, included in the request.

12 (5) In addition to the general public notice described in subsection (4)(a) of this
13 section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall be mailed a
14 copy of the fact sheet, the permit application (if any) and the draft permit (if any).

15 Section 6. Public Comments and Requests for Public Hearings. During the public
16 comment period provided under Section 5 of this administrative regulation, any interested person
17 may submit written comments on the draft permit and may request a public hearing, if no hearing
18 has already been scheduled. A request for a public hearing shall be in writing and shall state the
19 nature of the issues proposed to be raised in the hearing. All comments shall be considered in
20 making the final decision and shall be answered as provided in Section 12 of this administrative
21 regulation.

22 Section 7. Public Hearings. (1) The cabinet shall hold a public hearing when a
23 significant degree of public interest in a draft permit is found on the basis of requests. The

1 cabinet also may hold a public hearing whenever, for instance, such a hearing might clarify one
2 (1) or more issues involved in the permit decision.

3 (2) Public notice of the hearing shall be given as specified in Section 5 of this
4 administrative regulation.

5 (3) Any person may submit oral or written statements and data concerning the draft
6 permit. Reasonable limits may be set upon the time allowed for oral statements, and the
7 submission of statements in writing may be required. The public comment period under Section
8 5 of this administrative regulation shall automatically be extended to the close of any public
9 hearing under this section. The cabinet may also extend the comment period by so stating at the
10 hearing.

11 (4) A tape recording or written transcript of the hearing shall be made available to the
12 public.

13 Section 8. Obligation to Raise Issues and Provide Information During the Public
14 Comment Period. All persons, including applicants, who believe any condition of a draft permit
15 is inappropriate or that the cabinet's preliminary decision to deny an application, revoke a permit,
16 or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and
17 submit all reasonably available arguments and factual grounds supporting their position,
18 including all supporting material, by the close of the public comment period including any public
19 hearing under Section 5 of this administrative regulation. All supporting materials shall be
20 included in full and may not be incorporated by reference, unless they consist of state or federal
21 statutes and regulations, EPA or the cabinet's documents of general applicability, or other
22 generally available reference materials. Commentors shall make supporting material not already
23 included in the record available to the cabinet as directed by the cabinet. A comment period

1 longer than thirty (30) days may be necessary in complicated proceedings to give commentors a
2 reasonable opportunity to comply with the requirements of this section. Commentors may
3 request longer comment periods which may be established under Section 5 of this administrative
4 regulation. Nothing in this section shall be construed to prevent any person aggrieved by a final
5 permit decision from filing a demand for a hearing under KRS 224.10-420 and Section 13 of this
6 administrative regulation.

7 Section 9. Conditions Requested by the Corps of Engineers and Other Government
8 Agencies. (1) If during the comment period for a KPDES draft permit, the district engineer of
9 the Corps of Engineers advises the cabinet in writing that anchorage and navigation of any of the
10 waters of the Commonwealth would be substantially impaired by the granting of a permit, the
11 permit shall be denied and the applicant so notified. If the district engineer advises the cabinet
12 that imposing specified conditions upon the permit is necessary to avoid any substantial
13 impairment of anchorage or navigation, then the cabinet shall include the specified conditions in
14 the permit. Review or appeal of denial of a permit or of conditions specified by the district
15 engineer shall be made through the applicable procedures of the Corps of Engineers, and shall
16 not be made through the procedures provided in this administrative regulation. If the conditions
17 are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of
18 Engineers, those conditions shall be considered stayed in the KPDES permit for the duration of
19 that stay.

20 (2) If during the comment period the U.S. Fish and Wildlife Service, the National
21 Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish,
22 wildlife, or public health advises the director in writing that the imposition of specified
23 conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or

wildlife resources, the cabinet may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the cabinet may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

Section 10. Reopening of the Public Comment Period. (1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative regulation;

(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 5 of this administrative regulation, the cabinet shall issue, deny, modify, revoke and reissue, or revoke a permit. The cabinet shall notify the applicant and each

1 person who has submitted written comments or requested notice of that determination. This
2 notice shall include reference to the procedures for appealing the decision. For the purpose of
3 this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and
4 reissue, or revoke a permit.

5 (2) A final permit decision shall become effective thirty (30) days after the service of
6 notice of the decision under subsection (1) of this section, unless:

7 (a) A later effective date is specified in the decision;

8 (b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this
9 administrative regulation; or

10 (c) No comments requested a change in the draft permit, in which case the permit
11 shall become effective immediately upon issuance.

12 (3) The determination which is a condition precedent to demanding a hearing under
13 KRS 224.10-420(2) and Section 13 of this administrative regulation shall be the final permit
14 decision. The thirty (30) day appeal period shall begin on the date the determination is entered
15 by the cabinet and shall not begin on the date the permit decision becomes effective.

16 Section 12. Response to Comments. (1) When any final permit decision is issued
17 under Section 11 of this administrative regulation the cabinet shall issue a response to comments.
18 This response shall:

19 (a) Specify which provisions, if any, of the draft permit have been changed in the
20 final permit decision, and the reasons for the change; and

21 (b) Briefly describe and respond to all significant comments on the draft permit raised
22 during the public comment period or during any hearing. This response shall fully consider all
23 comments resulting from any hearing conducted under this administrative regulation.

1 (2) The response to comments shall be available to the public. Any demand for a
2 hearing on this response shall be filed according to procedures specified in KRS 224.10-420,
3 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.

4 Section 13. Hearings under KRS 224.10-420. (1) A determination under Section 11
5 of this administrative regulation when issued by the cabinet shall be subject to a demand for a
6 hearing pursuant to KRS 224.10-420(2).

7 (2) Any person aggrieved by the issuance of a final permit may demand a hearing
8 pursuant to KRS 224.10-420(2).

9 (3) Any hearing held pursuant to this section shall be subject to the provisions of
10 KRS 224.10-440 and 224.10-470.

11 (4) Failure to raise issued pursuant to Section 8 of this administrative regulation shall
12 not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-
13 420(2).

401 KAR 5:075 Approved for promulgation:

James E. Bickford, Secretary
Natural Resources and Environmental
Protection Cabinet

Date

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will not be provided unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by close of business on June 18, 2002 if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jeffrey W. Pratt, Director
Division of Water
Department for Environmental Protection
14 Reilly Road, Frankfort, Kentucky 40601
Telephone: (502) 564-3410 Fax: (502) 564-0111

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:075. Cabinet review procedures for KPDES permits.

Contact person: Jeffrey W. Pratt, Director
Division of Water

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation establishes review procedures for all KPDES permits.
- (b) The necessity of this administrative regulation:** This administrative regulation was needed because all NPDES delegated states must have compatible state regulations.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** This administrative regulation establishes review procedures for KPDES permits. The impact of the KPDES permit program helps to implement the pollution prevention goals of KRS Chapter 224.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation contains cabinet review procedures for KPDES permits. KPDES permits control the introduction of pollutants into waters of the Commonwealth. This is consistent with the goals of KRS Chapter 224.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this administrative regulation:** This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.
- (b) The necessity of the amendment to this administrative regulation:** If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.
- (c) How the amendment conforms to the content of the authorizing statutes:** The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.
- (d) How the amendment will assist in the effective administration of the statutes:** The corrected and updated regulation will be compatible with the corresponding federal regulation which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to over 10,000 permitted entities which may be individuals, businesses or state/local governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation amendment will be non-existent because the new requirements went into effect when the corresponding federal regulation

was adopted.

- (5) **Provide an estimate of how much it will cost to implement this administrative regulation:**
 - (a) **Initially:** The first year, the Cabinet will incur no additional costs.
 - (b) **On a continuing basis:** There will be no additional costs attributable to this amended administrative regulation.
- (6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** There will be no change in the funding sources due to this amended administrative regulation.
- (7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No increase in fees or funding will be necessary to implement this amended administrative regulation.
- (8) **State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:** This administrative regulation amendment does not establish or directly or indirectly increase any fees.
- (9) **TIERING:** Is tiering applied? Yes.
(Explain why tiering was or was not used) To the extent that the corresponding federal regulation provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 401 KAR 5:075 **Contact person:** Jeffrey W. Pratt

1. **Federal statute or regulation constituting the federal mandate.** There is no federal mandate to obtain delegation of the federal NPDES permit program.
2. **State compliance standards.** This regulation amendment establishes state standards that are the same as the corresponding federal standards.
3. **Minimum or uniform standards contained in the federal mandate.** There is no federal mandate.
4. **Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?** No, this regulation amendment does not establish any requirements stricter than that established by the corresponding federal regulation.
5. **Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** No stricter standards are being proposed.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 5:075 **Contact person:** Jeffrey W. Pratt

New _____ Amendment X

1. **Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?**

Yes X No _____

2. **State what unit, part or division of local government this administrative regulation will affect.** This administrative regulation amendment will affect city, county, or other municipal governments, including special districts, sanitation districts, etc.
3. **State the aspect or service of local government to which this administrative regulation relates.** This administrative regulation amendment relates to those entities that operate facilities that discharge into waters of the Commonwealth.
4. **Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.** None; since this regulation amendment merely provides for compatibility with the corresponding federal regulation which has already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None